

E-Filed 5/24/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PHOENIX LOGISTICS, INC.,

Claimant,

v.

EDO RECONNAISSANCE AND
SURVEILLANCE SYSTEMS, INC.,

Respondent.

Case Number C 06-80065 MISC JF
(HRL)

ORDER¹ GRANTING MOTION TO
CHANGE HEARING DATE

On May 3, 2006, Respondent filed a motion to change the hearing date of Claimant's petition to confirm binding arbitration award from June 2, 2006 to August 4, 2006. Respondent argued that, pursuant to California Code of Civil Procedure § 1288.2, it should be allowed 100 days after service of the Arbitration Award to file a motion to vacate. Claimant opposes the motion to change the hearing date. On May 18, 2006, this Court requested supplemental briefing as to the effect of *Demello v. Souza*, 36 Cal.App.3d 79, 83 (1973) on Respondent's motion to change the hearing date. Both parties have filed supplemental briefs in which they state that the Federal Arbitration Act ("FAA"), rather than the California Code of Civil Procedure, determines

¹ This disposition is not designated for publication and may not be cited.

1 the time within which when Respondent must file a motion to vacate.

2 The relevant provision of the FAA provides: "Notice of a motion to vacate, modify, or
3 correct an award must be served upon the adverse party or his attorney within three months after
4 the award is filed or delivered." 9 U.S.C.A. § 12. Thus, because Respondent was served with the
5 arbitration award on March 23, 2006, it must file a motion to vacate the arbitration award no later
6 than June 23, 2006. Because any motion to vacate will implicate many of the same issues as
7 Claimant's petition to confirm the arbitration award, it will be in the interest of judicial efficiency
8 for this Court to consider the two matters simultaneously. Accordingly, the Court, in its
9 discretion, will grant Respondent's motion to change the hearing date of Claimant's petition to
10 confirm binding arbitration award. The Court will reschedule the hearing date for Claimant's
11 petition to confirm binding arbitration award to July 28, 2006 at 9:00 a.m. Respondent's
12 anticipated motion to vacate will be heard on the same date.

13 IT IS SO ORDERED.

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15 DATED: May 24, 2006

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JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

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